

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

February 13, 2017

Ms. Nancy A. Berryhill
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-0001

Dear Ms. Berryhill:

I write concerning allegations of misconduct and whistleblower retaliation at the Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR) hearing office in Madison, Wisconsin. An Office of Inspector General (OIG) investigation found serious problems, including time and attendance fraud, and showed that two whistleblowers in the office experienced disparate treatment from other workers. I request information about how SSA will address these problems.

In July 2016, the OIG began an investigation into whistleblower retaliation, time and attendance fraud, illegal hiring practices, violent behavior, and the use of inappropriate sexual language in SSA records.¹ The OIG delivered a copy of its final report to SSA on January 30, 2017.² SSA OIG also presented its findings to the U.S. Attorney's Office for the Western District of Wisconsin, which declined prosecution.³

The OIG report substantiated time and attendance fraud by employees in the Madison ODAR hearing office. One employee "documented that he worked a regular eight-hour day . . . when he actually attended a Green Bay Packers football game at Lambeau Field, in Green Bay, Wisconsin."⁴ The OIG found that this conduct violated federal law, federal regulations, and the Standards of Ethical Conduct for Employees of the Executive Branch.⁵ Another employee used official and sick leave to gamble at an area casino.⁶ The OIG found this conduct violated federal law and federal regulations.⁷

The OIG report detailed evidence of hiring misconduct. The OIG found that the hearing office director "manipulated the hiring process on multiple occasions so that she could hire

¹ Soc. Sec. Admin. Off. of Inspector Gen., Report of Investigation, CID-16-00001-Z (Jan. 30, 2017) [hereinafter "SSA OIG report"].

² *Id.* SSA OIG also provided a copy of the report to the Office of Special Counsel. *Id.*

³ Telephone briefing with SSA OIG staff (Feb. 6, 2017).

⁴ SSA OIG report, *supra* note 1, at 36.

⁵ *Id.*

⁶ *Id.* at 37-38.

⁷ *Id.*

specific individuals, including the family members of current employees.”⁸ The office director posted vacancies for the same position at multiple grades to hire family members instead of veterans.⁹ The office director also attempted to dissuade applicants from applying to vacancies in favor of hiring family members.¹⁰ The OIG concluded that this conduct “may have violated merit system principles” in federal law.¹¹

The OIG report examined allegations against an administrative law judge (ALJ) relating to sexual harassment and inappropriate conduct. The OIG substantiated that the ALJ used inappropriate, racist, and sexist language in his hearing notes and writing instructions.¹² The inappropriate language was widely known throughout the office for several years, but was not addressed until after it received media attention.¹³ The OIG did not find any overt racial or sexist bias in the ALJ’s decisions.¹⁴

The OIG also noted that the two whistleblowers in the Madison ODAR hearing office experienced adverse treatment after making whistleblower disclosures.¹⁵ SSA, however, denied any retaliation. The OIG concluded: “While we did not substantiate any clear instances of reprisal against [the whistleblowers], who disclosed the malfeasance in the Madison HO at great personal risk, we note that both of them were held to strict interpretations of all agency policies, while other favored employees . . . were not.”¹⁶ The OIG transmitted this information to the Office of Special Counsel.¹⁷

Finally, it appears that some records and testimony were not available to the OIG during its investigation. The ALJ’s handwritten hearing notes and writing instructions were destroyed, apparently pursuant to record retention policies.¹⁸ The OIG was also unable to seek clarifying testimony from a Regional Attorney relating to whistleblower retaliation because the attorney failed to respond to the OIG’s requests.¹⁹

SSA must take appropriate steps to address the violations of federal law and regulation found by the OIG. Accordingly, I ask that you provide the following information and materials:

1. Please explain what steps SSA will take to address time and attendance fraud in the Madison ODAR hearing office.

⁸ *Id.* at 39.

⁹ *Id.* at 40-41.

¹⁰ *Id.* at 39-43, 45-46.

¹¹ *Id.* at 39.

¹² *Id.* at 49.

¹³ *Id.* at 50.

¹⁴ *Id.* at 53-55.

¹⁵ *Id.* at 2-34.

¹⁶ *Id.* at 57.

¹⁷ Letter from Gale Stallworth Stone, SSA OIG, to Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs (Feb. 1, 2017).

¹⁸ SSA OIG report, *supra* note 1, at 49.

¹⁹ *Id.* at 6; Telephone briefing with SSA OIG staff (Feb. 6, 2017).

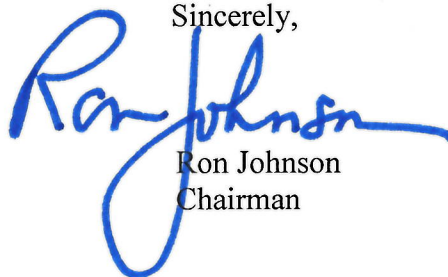
2. Please explain what steps SSA will take to address inappropriate hiring practices in the Madison ODAR hearing office.
3. Please explain what steps SSA will take to ensure that inappropriate racial or sexual language is no longer used in hearing notes and writing instructions.
4. Please explain why the two whistleblowers identified by the OIG were held to “strict interpretations of all agency policies” while other employees were not.
5. Please explain what steps SSA will take to ensure that whistleblowers are protected from retaliation.
6. Please provide SSA’s written policies for preserving federal records, in particular written material used in the decision-making process for disability adjudications.

Please provide this information as soon as possible but no later than 5:00 p.m., on February 27, 2016.

The Committee on Homeland Security and Government Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency and economy of operations of all branches of the Government.”²⁰ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operation and management of Federal regulatory policies and programs.”²¹ For purposes of responding to this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact David Brewer of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

Ms. Gale Stallworth Stone
Acting Inspector General

²⁰ S. Rule XXXV(k); *see also* S. Res. 445, 108th Cong. (2004).

²¹ S. Res. 73 § 12, 114th Cong. (2015).

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
115th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

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- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached. In such circumstances, consult with Committee staff prior to production of the requested documents.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
 7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
 8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
 9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
 11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
 12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
 13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as

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soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
15. In the event that a portion of a document is redacted on the basis of privilege, provide a privilege log containing the following information concerning any such redaction: (a) the privilege asserted; (b) the location of the redaction in the document; (c) the general subject matter of the redacted material; (d) the date, author, and addressee of the document, if not readily apparent; and (e) the relationship of the author and addressee to each other.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date, name, title, or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date, name, title, or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date, name, title, or other descriptive detail was correct.
18. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
19. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.

Instructions for Responding to a Committee Request

2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should also be read to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.
4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date, name, title, or other descriptive detail set forth in this request is inaccurate, but the actual date, name, title, or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date, name, title, or other descriptive detail was correct.

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12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response directly to the Committee offices and send only the classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

C. Definitions

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

Instructions for Responding to a Committee Request

4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address, email address, and phone number.
6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint venturer, loaned employee, part-time employee, permanent employee, provisional employee, or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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